

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Requirements for Digital Television)	ET Docket No. 05-24
Receiving Capability)	
)	
)	

COMMENTS OF THE WALT DISNEY COMPANY

These comments are submitted on behalf of The Walt Disney Company, which through subsidiaries owns ten television stations in the following markets: New York, Los Angeles, Chicago, Philadelphia, San Francisco, Houston, Raleigh-Durham, Fresno, Flint, and Toledo. Disney also owns The ABC Television Network (again, through subsidiaries). Disney is filing these comments to stress that, at a time when many policymakers are suggesting ways to accelerate the digital television transition, the Commission should – if anything – accelerate their mandated schedule for television sets to include DTV tuners.

Specifically, these comments are being filed in response to the Notice of Proposed Rulemaking¹ regarding a proposal to adjust the schedule by which

¹ Notice of Proposed Rulemaking, In the Matter of Requirements for Digital Television Receiving Capability, ET Docket No. 05-24 (rel. Feb. 14, 2005).

television sets 25-36 inches will be required to include DTV tuners. This proposal was filed by the Consumer Electronics Association and the Consumer Electronics Retailers Coalition (CEA-CERC) on November 25, 2004. The deadline set by the FCC is that 50% of units with screen sizes 25" to 36" must include DTV tuners by July 1, 2005 and 100% of such units must contain DTV tuners by July 1, 2006. As of July 1, 2007, 100% of units with screen sizes 13" to 24" must include DTV tuners.² CEA-CERC has proposed eliminating the 50% requirement and replacing it with a March 1, 2006 date.

The Commission has stated that its goal is "that all new television receivers include DTV tuning capability by July 1, 2007 in a phased in approach that will help develop economies of scale, and our goal of furthering the DTV transition."³ The Commission has stressed that "it is our intent that any revisions we may make to the tuner requirement should not serve to delay the completion of the DTV transition."⁴ Thus, the FCC has stressed that it will not extend the July 1, 2007 deadline. The FCC requested comment specifically on options other than that proposed by CEA-CERC and noted that it would "consider the full range of options that are consistent with our goals."⁵

Disney believes that ensuring that new television sets sold include digital tuners is paramount to the success of the digital transition. ABC's owned television

² For receivers 36" and above, 50% of such units were to have DTV tuners by July 1, 2004, and 100% of such units are to have tuners by July 1, 2005.

³ NPRM, at para. 6.

⁴ NRPM, at para. 7.

⁵ NPRM, at para. 8.

stations all currently are transmitting a digital over-the-air signal and all met or beat the FCC's required construction deadlines.⁶ The FCC recently has analyzed the data regarding the substantial number of television viewers that currently rely on the receipt of an over the air signal.⁷ In its report the Commission reiterated that approximately 15% of TV households rely on an over-the-air signal, and noted estimates that almost half of DBS subscribers (approximately nine million households) watch their local signals over-the-air. The Commission added that millions of viewers in MVPD households rely on over-the-air signals for televisions that are not hooked up to cable and satellite (citing estimates of 30 million such households). Disney/ABC filed comments in that proceeding, based on a survey that concluded that in New York, 29.1% of the viewers surveyed rely in whole or in part on over-the-air service, while in Los Angeles, 37.7% of the viewers surveyed rely in whole or in part on over-the-air service.

Disney appreciates that the FCC does not want to delay the transition and does not intend to delay the July 2007 deadline. However, at a time when many policymakers are discussing accelerating the digital transition – even as early as December 31, 2006 – it seems inconsistent for the Commission even to consider delaying any aspect of the transition for set manufacturers. Moreover, to the extent that policymakers are debating the creation of a subsidy program for converter boxes for analog television sets, delaying any of the DTV tuner deadlines will only

⁶ WABC, in New York, was off-air for a period due to the events surrounding September 11, and is still working towards a long-term, full-power solution for DTV.

⁷ Media Bureau Staff Report Concerning Over-the-Air Broadcast Television Viewers, MB Docket No. 04-210 (Feb. 28, 2005).

add to the potential scope of such subsidy programs. Although the FCC adopted the DTV tuner schedule in 2000, legislative and regulatory proposals that sets be required to include DTV tuners were discussed and debated for years before 2002. For example, in 1997, when Congress gave the FCC auction authority, Congressman Markey introduced an amendment that would have required tuners in television sets manufactured after 2001.⁸ A few years later, Dale Hatfield (then Chief of the FCC's Office of Engineering & Technology) proposed in a letter to Congress that tuners be required in all television sets manufactured after 2003.⁹

The digital television transition is at a unique stage. Broadcast networks and stations like ABC and its owned stations have spent hundreds of millions on the digital transition on programming and equipment. Policymakers are debating proposals to accelerate the digital transition and to create a consumer converter box subsidy program. Yet, television sets continue to be manufactured and sold without DTV tuners and with no notice being given to consumers that such television sets lack DTV tuners. Indeed, even under the FCC's own schedule, television sets with screen sizes from 13" to 24" do not have to contain DTV tuners until July 1, 2007, which is AFTER the date by which some policymakers have indicated that they would choose to discontinue analog broadcasts.

⁸ See, e.g., Statement of Rep. Edward Markey (July 30, 1997) re: Concerning the Deal to Balance the Budget; "House Panel Approves Spectrum Auction Policy," *Communications Daily* (June 13, 1997) (quoting CEMA spokesman as stating "We have prevailed and put a spike through the heart of the Markey and Dingell amendments"); "House Spectrum Markup Starts and Stops," *Communications Daily* (June 9, 1997).

⁹ Letter from Dale N. Hatfield, Chief of the FCC Office and Engineering and Technology, to Rep. W.J. "Billy" Tauzin, Chairman of the House Subcommittee on Telecommunications (Sept. 1, 2000).

Given these circumstances, it seems unwise for the FCC to repeal the July 1, 2005 50% benchmark for sets to contain DTV tuners, particularly given that in absence of such a deadline, a large number of analog-only sets will likely be sold during the holiday season and during January (pre-Super Bowl), the time period that is widely known as when the vast majority of television sets are sold. If the Commission is to consider the full range of options available to it – and if it concludes that there are legitimate concerns with the 50%/100% requirements – then the Commission should consider further accelerating the 100% benchmark so that it falls in advance of the holiday selling season to prevent legacy problems at a later point.

Respectfully submitted,

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